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Paper 3

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OFFICE OF PETITIONS

In re Application of
Miyata, et al.
Application No. 10/091,269
Filed: 5 March, 2002
Attorney Docket No. 02131/LH

DECISION ON PETITION

This is a decision on the petition (styled "Petition to Accord Correspondence Filing Date of the Date the Correspondence Was Deposited with the USPS (37 C.F.R. §1.10(d))",¹ filed on 28

¹ The regulations at 37 C.F.R. §1.10 provide:

§1.10 Filing of papers and fees by "Express Mail."

(a) Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

(b) Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked. The paper(s) or fee(s) that constitute the correspondence should also include the "Express Mail" mailing label number thereon. See paragraphs (c), (d) and (e) of this section.

(c) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that there is a discrepancy between the filing date accorded by the Office to the correspondence and the date of deposit as shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation, may petition the Commissioner to accord the correspondence a filing date as of the "date-in" on the "Express Mail" mailing label or other official USPS notation, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail;" and

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

(d) Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and

(3) The petition includes a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

March, 2002, and seeking for the above-identified application a filing date of 4 March, 2002, instead of the presently accorded filing date of 5 March, 2002.

The petition is **DISMISSED**.²

Your request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.10."

There will be no further reconsideration thereafter.

BACKGROUND AND ANALYSIS

The record reflects that:

- notwithstanding a transmittal page certificate of Express Mail (US Postal Service (USPS) Express Mail No. EV044465440US) dated 4 March, 2002, the records of the USPS-- copies of which have been placed into the record and are provided herewith to Petitioner-- clearly demonstrate that the application package was deposited with the USPS at 3:42 p.m. on 5 March, 2002;
- as a result Office accorded a filing date of 5 March, 2002, consistent with the provisions of 37 C.F.R. §1.10;

(e) Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Commissioner to consider such correspondence filed in the Office on the USPS deposit date, provided that:

(1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Commissioner, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

(f) The Office may require additional evidence to determine if the correspondence was deposited as "Express Mail" with the USPS on the date in question. (Emphasis supplied.)

[48 Fed. Reg. 2708, Jan. 20, 1983, added effective Feb. 27, 1983; 48 Fed. Reg. 4285, Jan. 31, 1983, paras. (a) & (c), 49 Fed. Reg. 552, Jan. 4, 1984, effective Apr. 1, 1984; paras. (a) - (c) revised and paras. (d) - (f) added, 61 Fed. Reg. 56439, Nov. 1, 1996, effective Dec. 2, 1996; paras. (d) & (e) revised, 62 Fed. Reg. 53131, Oct. 10, 1997, effective Dec. 1, 1997]

² Pursuant to Petitioner's authorization, the petition fee (\$130.00) is charge to Deposit Account 06-1378.

- Petitioner encloses a copies of: (a) "Pickup Service Statement for Express Mail, Priority Mail, or Parcel Post" (Service Statement), (b) Petitioner's office "Patent Office Express Mail Record," and (c) the transmittal letter dated 4 March, 2002;
- in the Service Statement the above-referenced Express Mail number is identified along with at least four (4) other Express Mail numbers, however, these latter numbers are not legible so it is impossible to track their deposit dates if at variance from the instant application;
- if, as Petitioner alleges, there are a pickup date and a signature on the above-described receipt, they are not legible in the materials supplied with the petition;

As of this writing, Petitioner has failed to make a satisfactory showing that the application was deposited with the USPS on 4 March, 2002, rather than on the presently accorded date of 5 March, 2002.

The renewed petition, if any, must be accompanied corroborating evidence sufficient to satisfy Petitioner's burden of proof.

The instant petition must be and hereby is **dismissed**.

Any future correspondence with regard to this matter under 37 C.F.R. §1.10 should be addressed as follows:

By mail: Assistant Commissioner for Patents
 Box DAC
 Washington, D.C. 20231

By FAX: (703) 308-6916
 ATTN: Office of Petitions

By hand: Crystal Plaza 4
 Room 3-C23
 2201 South Clark Place
 Arlington, VA 22202

The application is being forwarded to Technology Center 2600 for further processing.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 305-9199.

A handwritten signature in black ink, appearing to read "J. Gillon, Jr.", with a stylized flourish at the end.

John J. Gillon, Jr.
Senior Attorney
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Encl: USPS Express Mail tracking record (3) pages